

Legal Advisor

Leon County's Source for Legal Information

Issue 08

Looking Ahead!

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Welcome to the first quarter Legal Advisor for 2016. It has become pretty evident that the slowdown in the economy is over, and that things are beginning to boom again in Leon County. With all of these additional activities and matters which are coming before the Leon County Board of County Commissioners, the legal issues which are generated by them are likewise beginning to increase and become more complex. We hope that when legal issues arise, you will again contact us as soon as possible so that we can work with you in resolving any concerns and put Leon County in the best posture to deal with any problems which may arise. We also hope you enjoy the content of this edition of the Legal Advisor and hope that you find the articles informative and useful.

In addition to providing all of the legal representation for Leon County, its Board of County Commissioners, and its Staff, the County Attorney's Office is also engaged in providing legal assistance to a number of new boards and committees of the County. Not only is our office involved in the County related legal issues, but the

attorneys and staff in our office are significantly involved in community events like the celebration of the 25th anniversary of the Main Library, tutoring, assisting with mock trial competitions, acting as Judges in moot court, and providing guidance to law student interns in the County Attorney's Office. Additionally, I have had the honor and privilege of continuing with my membership on the Board of Directors of the Florida Association of County Attorneys, and since September of 2015, I am now serving as President of the International Municipal Lawyers Association for a one year term. IMLA is THE national local government lawyers organization for the United States and for Canada. You will be seeing some of the product developed by IMLA in future editions of the Legal Advisor.

As usual, if you have any concerns, question or comments, please bring them to the attention of myself or the staff at the Leon County Attorney's Office. Thank you for allowing us to continue to be your "Legal Advisor."

~Herbert W.A. Thiele

Board Adopts Employee Assistance Program Codifying County Practices

By: Patrick T. Kinni, Deputy County Attorney

At its regularly scheduled meeting of February 9, 2016, the Board of County Commissioners adopted a new policy establishing an Employee Assistance Program. An Employee Assistance Program has been authorized under the Leon County Personnel and Policies Procedures Manual for many years, and same has been effectively implemented through the County's Human Resources Department in conjunction with an outside vendor.

Effective March 1, 2016, the newly codified Program goes into effect. The Board adopted the Policy because it recognizes there exists a wide range of problems, not directly job related, that often affect job performance. The Employee Assistance Program is intended to help our employees who have personal issues, behavioral or stress problems, drug or alcohol abuse issues or other matters impacting their work performance. Those employees may be provided confidential consultation and treatment as necessary to prevent or treat those issues from progressing to a degree at which the employee can no longer work effectively. The Program is voluntary and available to all County employees. However, an employee may be referred to the Program by the County when the employee's situation has deteriorated to a degree that it significantly impacts job performance. Under such circumstances, Program participation may be mandatory.

The Program provides services to assist

employees in resolving a wide range of problems that may arise and interfere with family, work, and other important areas of life, by allowing employees the opportunity to meet with a professional counselor in an effort to assist that employee in identifying the source of any such problem and thereafter developing a plan to resolve or otherwise deal with the situation. The Program is designed to help resolve a broad range of issues, including relationship problems, family difficulties, stress, anxiety, drug or alcohol dependency, grief issues, and other personal or work/life balance issues or challenges facing our workforce. There is no charge for the initial assessment and referral consultation in the Program, regardless of whether the visit is the result of a self-referral, formal supervisory referral, condition of employment or substance and alcohol abuse referral. However, should the employee need additional counseling, the employee is responsible for the payment of such care or counseling after the initial assessment has taken place.

As mentioned above, Program referrals occur under four categories, including self-referral, formal supervisory referral, condition of employment referral, and substance or alcohol abuse referral. Self-referrals occur when an individual employee recognizes they are experiencing behavioral or stress, alcohol or substance abuse related, or other problems and wish to voluntarily seek help. A formal supervisory referral occurs when a supervisor observes employee conduct or work performance that

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has reached a level or pattern that warrants disciplinary or administrative action. Thereafter, the supervisor may formally refer the employee to the EAP provider. Such referrals are voluntary and the employee is not required to accept such counseling. On the other hand, a condition of employment referral occurs when circumstances dictate that the employee may only remain employed, if the employee enters the Program as a result of problems observed by the supervisor, which seriously and adversely affect work performance or employee conduct, and the referred employee successfully completes a treatment plan, if any. The fourth type of referral contemplated under the Policy involves substance or alcohol abuse. When substance or alcohol abuse is reasonably suspected, the Employee Assistance Program may be offered to an employee. Depending on the circumstances, a substance or alcohol abuse referral may be deemed a condition of employment referral (mandatory participation) or a formal supervisory referral (non-mandatory participation). While utilization of the Employee Assistance Program treatment plans for substance or alcohol abuse may be offered in a situation involving a violation of the County's Drug and Alcohol Free Workplace Policy, disciplinary action, up to and including termination of employment, may result.

The Policy safeguards the confidentiality of employee records and provides that no record of treatment will be maintained in an employee's personnel file or in any other official departmental files. Further, no information concerning the employee's treatment may be released by the

Employee Assistance Program provider to any person without the express written consent of the employee. Importantly, an employee's job security may not be jeopardized nor will disciplinary action be taken against an employee for participation or non-participation in the Program through a self or formal supervisory referral. Such referrals are strictly voluntary and an employee has the right to refuse to participate or discontinue participation at any time. However, as stated above, condition of employment and substance or alcohol abuse referrals requiring mandatory EAP treatment plan compliance, are not voluntary, and disciplinary action may be taken for non-compliance.



Should any employee need the assistance of the Employee Assistance Program, the individual employee should contact Genevieve Minnix, Employee Relations Manager, at 850-606-2400 or contact the EAP provider directly at 850- 422-2000.

Employee Spotlight Beyond the Office

The Friends of the Library's Silver Anniversary Gala, celebrating 25 years of the opening of the Main Collins Library on West Park Avenue and the vision of Walli Beall, Gayle Nelson, Paula Smith, and Project Build!



Pictured: Legal Administrator, Marcia Labat and former County Commissioner Gayle Nelson, who was one of the honorees.



Pictured are Friends of the Library Board members: Marcia Labat, Darby Tish and Camille Okonkwo. Marcia has been on the Friends of the Library Board for 10 years and is a Past President.

2016 Legislative Initiatives and Firearms in the Workplace

By: Patrick T. Kinni, Deputy County Attorney

With a bevy of legislative initiatives aimed at permitting the open carry of firearms and lifting the prohibition of gun possession on college campuses around the state, also known as campus carry, the Florida House opened this 2016 Legislative Session with a bang. Florida



law generally prohibits the open display or open carry of firearms and certain weapons in public and outlaws gun possession at state universities and colleges. However, House

Bill 163 proposed to permit those persons holding concealed carry licenses to openly carry firearms, while HB 4001 sought to remove the provision that prohibited concealed carry license holders from openly carrying a handgun or carrying a concealed weapon or firearm into a college or university facility.

Any regulation of firearms by the government must be consistent with both the U.S. and State Constitutions. The Second Amendment to the United States Constitution provides that “[a] well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.” However, the Supreme Court, in its review of a case involving this Constitutional provision, has stated that “[l]ike most rights, the rights secured by the Second Amendment

are not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”¹ The Florida Constitution also provides that “[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”² Thus, any regulation of firearms must reasonably fit a significant, substantial or important governmental purpose.

Chapter 790, Florida Statutes, sets forth the regulations pertaining to weapons and firearms in the state. Generally, an individual is authorized to own, possess, and lawfully utilize a firearm without the necessity of obtaining a license, if the individual is not statutorily prohibited from possessing same and the use occurs in a lawful manner and location. There are numerous prohibitions under Florida law specifying those individuals who may not lawfully possess a firearm, including minors, convicted felons and delinquents. As stated above, Florida law also prohibits the open carry of firearms, with limited exceptions. On the other hand, holders of concealed carry weapons licenses may carry firearms, provided the firearm is

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¹ *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

² See, Article I, Section 8(a), Florida Constitution.

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concealed, and may display the firearm only briefly in a non-threatening manner. Nevertheless, and importantly, concealed carry weapons license holders are prohibited from carrying a firearm into several statutorily specified locations, including a police, sheriff, or highway patrol station; detention facility, prison or jail; courthouse; courtroom; polling place; or meeting of a governing body of a county.³

While the field of regulation of firearms is preempted to the state, the Legislature has specifically authorized employers (both public and private) to regulate, and even prohibit the carrying of firearms by an employee during and in the course of the employee's official duties. Leon County policy prohibits the threat or use of a weapon on the job, which is considered misconduct subject to termination;⁴ and prohibits the possession of firearms by employees on County property, in County facilities, at County worksites, and in County vehicles.⁵

However, Section 790.251, Florida Statutes, otherwise known as Florida's "guns at work

law," provides that any employee who possesses a valid license to carry a concealed firearm under Section 790.06, and who works, volunteers, is an independent contractor, or is a customer of an employer, may not be prohibited from "possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and when the customer, employee or invitee is lawfully in such area."⁶ This provision does not apply to motor vehicles that are owned, leased or rented by a public or private employer, nor does it apply to any other property owned or leased by a public or private employer upon which the possession of a firearm is prohibited by Federal law or by Florida general law.

As the Legislative Session entered its final week, the initiatives encompassed by HB 163 and HB 4001 seemed to lose steam in the Senate and ultimately were never heard on the Senate floor. Now with the 2016 Session officially over, gun rights advocates in favor of open carry and campus carry will have to wait yet another year.

³ See, Section 790.06(12)(a), Florida Statutes (2015).

⁴ See, Section 10.05(D)(9), Leon County Personnel Policies and Procedures Manual.

⁵ See, BCC Policy No. 03-12, Violence Prevention and Intervention Policy.

⁶ See, Section 790.251(4)(a), Florida Statutes (2015).

**Legal
Issues?**

Areas of Interest?

Questions?

We Want to Hear From You!

Suggestions?

Comments?

Want Us to Visit You?

**Call or email us today.
We are here to help!**

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